United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-1162

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
74-1162

B P/S

Archie Peltzman,
Plaintiff-Appellant,

V.

CENTRAL GULF LINES, INC.,
Plaintiff-Appellee.

REPLY BRIEF OF PLAINTIFF-APPELLANT ARCHIE PELTZMAN

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CENTRAL GULF LINES, INC.
DEFENDANT-APELLEE.

BRIEF OF PLAINTIFF-APPELLANT
ARCHIE PELTZMAN

RESTATEMENT OF THE ISSUES

1. What did Circuit Court do that it should not have done?
   a. Court made a clearly erroneous judgment on the merits.
2. What didn't the Court do that it should have done?
   a. Court did not follow the Federal Rules of Court Procedure. Court did not follow the Maritime Law or Labor Law.
3. What did the Company do that it should not have done?
   a. Company demanded that appellant get a "clearance" from the union on pain of discharge.
4. What didn't the Company do that it should have done?
   a. Company should have granted appellant a leave of absence of one trip off as called by the bargaining agreement.
   b. Company should have inquired of appellant and union as to the status of appellant in the union. Was he member, permit card member, withdrawal card member

or was he in good or bad standing in the union?

c. Company should have rehired appellant after one trip off or after a three months trip of the vessel irregardless of union membership.

ARGUMENTS ON THE MERITS

The U.S. Supreme Court has interpreted the Maritime Law in the Waterman,Southern S.S. Co. (supra) & the U.S.Bulk Carriers V Arguelles 400 U.S. 351, 1971. The Court of Appeals have interpreted the Vitco, Parker V Lester, Peninsula South Atlantic & Texas cases. In all cases herein cited the Maritime Law has been strengthened & enlarged in the protection of the rights of seamen. The U.S. Bulk Carrier case held that a seaman could not prohibited from proceeding under title 46 Sec. 596 for wages due him, on the ground that he had not first exhausted grievance procedure provided by collective bargaining agreement between his labor union & his employer. The other cases have been cited in (PB24-37).

This is in accordance with Congressional support since 1832. See Oliver V Alexander & Harden V Gordon (supra) (PB 33,34)

In a late case, February 19, (1974) Alexander V Gardner Denver Co; 39 Led 2^{d} 147, the Supreme Court in an unanimous decision reversing the Court of Appeals for the tenth Circuit, it was held that an employees statutory right, under Title Vll, Equal Employment Act to a trial de novo on his claim of discharge as as a result of a racially discriminitory employment practice

was not foreclosed by prior submission of his claim to final arbitration under a non discrimenation clause of a collective bargaining agreement.

Appellant argues that a seamans action up to 1966 by the rules of this Court of Appeals mandated a de novo trial for a seamans action. This may still be the case if the rules are construed strictly in favor of seaman since the Supreme Court in a note 21 p. 165, remarking about arbitrators decisions in collective bargaining agreements says..."But Courts should ever be mindful that Congress in enacting Title Vll thought it necessary to provide a judicial forum for the ultimate resolution of discriminatory employment claims. It is the duty of Courts to assure the full availability of this forum". See also on page 162-163 (20) discussing respondent's brief, Federal Courts should defer to arbitral decisions on discrimination claims where (i) the claim was before the arbitrator, (ii) the collective-bargaining agreement prohibited the form of discrimination charged in this suit under title VII and (III) the arbitrator has authority to rule on the claim and to fashion a remedy (Note 17)

Rejecting this argument the Supreme Court said under the respondent's proposed rule, a court would grant summary judgement and dismiss the employees action if the above conditions were met. The rules obvious consequences <u>would be to deprive the petitioner of his statutory right to attempt to establish his claim in a Federal Court.</u> (emphasis added)

The Supreme Court explained p-163 "Furthermore we have long recognized that "the choice of forums inevitably affects the scope of the substantial rights to be vindicated" U.S. Bulk Carriers V Arguelles, 400 U.S. 358, 359-(1971) (Harlan J) concurring. Respondent's deferral rule is necessarily premised on the assumption that arbitral processes are commensurate with judicial processes and that Congress implicitly intended Federal Courts to defer to arbitral decisions on title VII issues. We deem this supposition unlikely. (emphasis added)

Appellant argues from the facts in his case (PB9-15) he never had arbitration, the N.L.R.B. never produced any record of its investigations into the Circuit Court, & in the Court below appellants efforts to subpoena the N.L.R.B. record, and get discovery from the appelles was frustrated by the Circuit Courts gross abuse of the Federal Rules of Civil Procedure, by not ruling on any of his motions. Instead after dismissing the complaint the Court ruled these issued were moot, but did not support this dictum with any cases. In effect the rules were iqnored, & the only motion that was ruled on was the summary judgment for the appellee. Appellants' cross-motion for partial summary judgment was not even mentioned in the opinion.

Appellant argues from the Essays of Judge Charles E. Clark, Procedure, The Handmaid of Justice, edited by Wright & Reasoner, West Pub. 1965 Page 41 - The function of Courts is to do justice to particular Ltigants in particular cases.

Page 232.- A decision cast in terms of a refusal to act is under our system a decision for one party with all the elements of success for that particular litigant thus indicated, & no abstration can lesson or conceal that fact.

ARGUMENTS ON THE ISSUES

1. The company cannot demand a "clearance" from a seaman for either hiring or rehiring him.

a. Sec 643 of title 46 requires only a certificate of identification. In earlier years (see Anderson Case 1926 (supra) a continuous discharge book was required). Now in 1974 only so called Z cards (U.S. Coast Guard identification certificates) need be shown to U.S. Shipping Commissioner by a non licensed seaman. When licensed seamen sign on they must also show their licenses, which the U.S. Coast Guard issues. In the case of a Radio Officer, he must also have an F.C.C. Radio-Telegraphic License, with at least six months sea service on his license.

b. Sec 643 (g) proscribes a penalty for discrimination in employment if the employee is discriminated because he has either a certificate but no discharge book or vice versa. While the discharge book is no longer used, the effect of this section shows that Congress in earlier years wished to protect the seamen when he applied for a job. They still do.

c. Sec 599 a proscribes a penalty for anyone demanding payment for providing a seaman with employment.

The appelle call this a kickback provision. Appellant argues that by whatever name it is called it is a prohibition & the Courts will enforce prohibitions protecting seaman even if the payment is called for under a "union-security" agreement.

2. The Company cannot discharge a seaman except for offenses cited in Sec 701 Title 46. The penalties are also cited in this section.

a. The analysis in the U.S.F.C.A. 1972 Supplement & Volume, nrs. 1-38 explains the various offenses & punishment. Nowhere in this section is the holding that a seaman must join a union or an association as a condition of employment at time of employment, 30 days after employment or at any time. Any private agreement to this effect even if sanctioned by the National Labor Relations Act is prohibited by Maritime Law. The N.L.R.A. permits check off of dues, but Sec 601 of title 46 prohibits it & when a seaman signs an authorization for any check off of dues he can sue in Federal Court for repayment. Only by a Court order for support of a seamans family, can a seamans wages be attached. It has been held that a seamans wages are nailed to the mast. The modern equitable holdings in the maritime field are construed to the effect in appellants opinion that his job is also nailed to the mast.

ARGUMENTS REBUTTING APPELLES' AUTHORITIES

1. Republic Steel Co V Maddox - 379 650 (1965) Holding that under federal policy reflected in the L.M.R.A. contract grievance procedures, which apply to severance a well as other types of claims must, unless specified as non-exclusive, be exhausted before direct legal redress is sought. (Reversing a state Court because State law did not require Maddox to exhaust contract grievance before suit which he had not done.

Appellant argues from his (PB19-24) & also that even assuming he had not tried to arbitrate this dispute the U.S. Arbitration Act title 9 U.S.C. Sec 1 exempts him as a seaman from arbitration involving his employment contract.

Appellant refers the Court to the dissenting opinion in Maddox quoting p 668, Humphrey v Moore, 375 U.S. 335, Syres v Oil Workers Intl. Union, 350 U.S. 892, Brotherhood of R.Trainmen v Howard, 343 U.S. 768, Tunstall v Brotherhood of Locomotive Firemen & Enginemen 323 U.S. 210, Steel V Louisville & N.R. Co.,323 U.S. 192. All to the effect that employees for one reason or another have felt themselves compelled to sue the union as a prerequisite to obtaining any help from the union at all.

Appellant refutes the argument that Vaca v Sipes 386 U.S. 171 (1967) applies with Justice Blacks dissent in Maddox & appellant"s argument in Maddox.

2. N.L.R.B. v General Motors Corp. 373 U.S. 734 (1963) -

happened here. See the certified Court decrees in (A 64-67) & (A 68-82) relating to closed shop & preferential hiring, as the N.L.R.B. found when the union in 1950 & 1957 used its coercive power in conjunction with the N.M.U. & other maritime unions in 1948 to force the Shipping Companies to sign an illegal closed shop preferential hiring agreement & see (PB 29,36) discussing the Anderson Case 272 U.S. 359, (1926).

Appellant argues that the shipping industry is subsidized. The U.S. Govt pays the increased wages every time the seaman gets a raise in salary. The Government pays a subsidy to update the ships in the Merchant Marine. The public policy is to strengthen the shipping industry. Allowing shipping companies & unions to close the industry to potential seamen unless they join & remain in the union gives the union a monoply & thereby reduces the free will of theindividual which the Government under its Constitution protects. Also since N,Y, State law is not followed in a Maritime action, the union shop bargaining agreement whether allowed or disallowed according to the particular State is inapplicable here. It is the statute Sec 701 of title 46 & Sec 599a that is the applicable law. See the Norris-LaGuardia Act (addendum 1) which bans yellow dog agreements & allows the individual to decline to associate with his fellows or to associate. This is the Declaration of the public policy of the United States.

3. Desbrosier v American Cynamid Co, 377 F 2d 864 (2nd Cir. 1967).

This case does not apply because it is the same holding as Maddox & Vaca v Sipes & appellant uses the same argument here as he used in Maddox.

But see Smith v Pittsburg Gage & Supply Co., 323 FS 256 (1971), holding that where employer maintained that there was no contract in effect during period when the employees were discharged, employees were not barred from maintaing action because of failure to exhaust contractual grievance procedures.

This was a ten year cause of action & finally employees rights were vindicated after a jury trial. Employer moved for judgment n.o.v. & for a new trial. The motion was denied.

Appellant argues that there can be no issue as to his contract. It was the shipping articles plus the permanent assignment plus the protection of the so-called grievance procedures which were not utilized. Like so many union agreements the promise is there but the utilization of those procedures are not. Instead the order goes out to the ship or the shop, join or get out of the industry & in appellants' case it has meant he has not worked in the industry since he was discharged.

The appelles in their brief have not disputed one seamans case in appellants' brief, but they rely on the union-security clause in the bargaining agreement.

Appellant has shown by the statutes cited that he does not have to join, or remain in the union & neither does he have to pay dues or fees in order to be employed. The statutes forbid forced payment. Any dues or initiation fee that appellant paid in the past was voluntary, now he is being forced. He refuses & argues that compulsion in any shape, form or manner is ultra vires, whether it is for a good cause, bad cause or no cause at all. He has a constitutional right to work, to seek his livlihood where he wills & do what his conscience & will & thought tells him he must do whatever reason he chooses. And he stands ready to defend that right as long as he can.

See N. Redlich-37 N.Y.U.L. Rev. 787,812 (1962) writing about ninth amendment rights.

See Summary Judgment-Marion R. Smyser South Dakota LR (1971)- cases holding that there are certain issues that must go to trial & in others it is not necessary because no factual issue is involved.

Appellant wishes to condense these cases & cites Matson Navigation Co v U.S. 173 FS 562 (N D Calif. 1959)-holding question is one of law, no factual issue is involves.

Tappan v General Motors, 245 FS 972 (N D Ohio 1965)- Movant must be entitled to judgment as a matter of law. Rule 56 (e) requires movant to show that he is entitled to a judgment as a matter of law. Simply stated this requirement necessitates the application of controlling law to the operative facts.

Willets v General Telephone Directory Co., 38 F.R.D. 406 (SDNY) 1965- Rule 56 (e) requires all affidavites to be made on personal knowledge, & the Courts have been quick to reject affifavits of attorneys & others not based on personal knowledge.

REBUTTAL ARGUMENTS ON THE MERITS

1. Appellant cites the following arguments to support his cause of action on the merits.

Rebutting the collateral estoppel argument see Labor Law, Res judicata, the applicability of Res judicata & Collateral estoppel to actions brought under Sec 8 (b) (4) of the National Labor Relations Act- Michigan Law Review Vol 67, 824 (1969)-

Note 16 p 826 - In its broadest sense "res judicata" refers to the effect of a prior judgment on a subsequent adjudication which involves the same issues or cause of action. Restatement of judgments Sec 45 (1942).

2. The evidence produced by appelle in his summary judgment motion ie appelle's attorney's affidavit & the bargaining agreement (with the relevant pages concerning grievance procedures & vacation plans excised), & the N.L.R.B. letters citing its non final decision is overpowered by the appellants documents introduced in his motions for genuiness of documents & other documents which show where the truth is.

3. Rebutting the dictum that 46 U.S.C. Sec 594 has no application to the situation, the appellant refers the Court to Bunn v Global Marine Inc. (CA5 1970) 428 F2d 40 - Holding that Sec 594 is meant to afford the seaman a simple, summary method of establishing & enforcing damages for the breach of his contract of employment. Since this statute is a remedial statute the terms used should be construed broadly & flexibly to effectuate the statutes purpose.

Appellant argues that the employment contract now means something more than it originally meant. See (PB 27,33,37), that it now means full wages for a period of time, whether employment is for a voyage or for a definite time. Vitco v Jonich (supra).

4. Rebutting the dictum that on the merits companys' refusal to rehire plaintiff was lawful under the circumstances, Appellant argues that the discharge was not lawful because of title 46 Sec 701 restraints on the master & the Company in regard to discharge for various offenses. Refusing to pay an initiation fee or dues is not listed in Sec 701 & Maritime law forbids discharge for any reason out side its protective statutes.

Appellant argues from Workers Rights against employers & unions - Justice Francis - A Judge for our season - Alfred W. Blumrosen, Rutgers Law Review Vol 24 p 480 (1970).

On p 482 Eilen v Tappin's Inc. 16 N.J. Super 53,83 A2^{d} 817 (Law Div 1951), Justice Francis held that where a discharged employee sued his former employer for breach of a "permanent" employment contract, the Courts would carefully scrutinize the transaction to determine that such a contract had in fact been agreed to by the employer & was not a post-employment fabrication of a disgruntled employee Where the Court found that such an arrangement had been entered into by the employer & employee, the bargain would be enforced. 116 N.J. Super at 56-58, 83 A2^{a} 854,863-64 (App Div 1955).

See Donnelly v United Fruit Co., 190 A2^{d} 825 (1963) - Justice Francis held that where a union refused to arbitrate an employees grievance under a collective contract which provides for arbitration, the employee, after seeking to utilize the grievance & arbitration procedures himself could maintain an action against both union & employer either for damages or to compel arbitration, 190 A 2^{a} 841-43.

5. Rebutting District Courts opinion that his discovery motions are mooted by the summary judgment order. Appellant argues that this is contrary to the F.R.C.P. , which allows discovery, so that the evidence can be examined first & then summary judgment may follow.

CONCLUSION

For the foregoing reasons the appellant urges the Court to reverse the decision of the District Court insofar as that decision constitutes an erroneous interpretation of the Maritime Law & Labor Law & to grant partial summary judgment to the appellant on the grounds that a wrongful dismissal by the Company deprived him of his property rights to a lawful employment & deprived him of his contractual & tenure rights in the job with no fault whatsoever on his part.

Dated: New York, New York, April 25, 1974.

Respectfully submitted
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[CHAPTER 90.]

AN ACT

March 23, 1932.
[H. R. 5315.]
[Public, No. 65.]

To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.

Injunctions in labor disputes.
Jurisdiction of courts to issue.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

Declaration of the public policy of the United States.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Promise, etc., contrary thereto not enforceable in courts.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Nature of unenforceable promises, etc.

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

Agreements inhibiting joining of labor or employer organizations.

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

Agreements to withdraw membership in labor, etc., organizations during employment.

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

Labor disputes.
Acts of disputants not constituting grounds for issue of injunction, etc., in.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

Refusal to continue employment relation.

(a) Ceasing or refusing to perform any work or to remain in any

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act; Retention of organization affiliations.

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value; Payment of strike, etc., benefits.

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State; Aiding disputants during pendency of suit.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; Giving publicity to disputed facts.

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; Peaceably assembling.

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified; Communicating intentions to do acts.

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and Agreements for concerted acts.

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act. Urging others to join.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act. Concerted acts of disputants not unlawful combination.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. Organization officers not liable for acts of individual members. If participation or ratification.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect— When injunction, etc., may issue. Procedure.

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof; If unlawful acts are threatened, etc. Restriction.

(b) That substantial and irreparable injury to complainant's property will follow; Irreparable injury.

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief; Greater injury to complainant.

(d) That complainant has no adequate remedy at law; and No adequate remedy at law.

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. Adequate protection not available.

persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

Proviso. Issue of temporary restraining order.

Effective period.

Undertaking with security to be filed.

Purpose.

Scope.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Duty of complainant to comply with legal obligations.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Basis for injunctive relief.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

Extent of relief.

Certification of record for review.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the tempora-

Procedure and precedence.

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affirmed modified or set aside with the matter

fined), the accused shall enjoy the right to a speedy and public ial by an impartial jury of the State and district wherein the ntempt shall have been committed: *Provided*, That this right all not apply to contempts committed in the presence of the court so near thereto as to interfere directly with the administration of stice or to apply to the misbehavior, misconduct, or disobedience of ıy officer of the court in respect to the writs, orders, or process of ıe court.

Venue.

Proviso. When right to trial not available.

SEC. 12. The defendant in any proceeding for contempt of court ıay file with the court a demand for the retirement of the judge tting in the proceeding, if the contempt arises from an attack upon ıe character or conduct of such judge and if the attack occurred lsewhere than in the presence of the court or so near thereto as to ıterfere directly with the administration of justice. Upon the filing f any such demand the judge shall thereupon proceed no further, ut another judge shall be designated in the same manner as is pro- ided by law. The demand shall be filed prior to the hearing in the ontempt proceeding.

Demand for retirement of judge.

Proceedings to cease until another judge designated.

Time of filing demand.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor lispute when the case involves persons who are engaged in the same ndustry, trade, craft, or occupation; or have direct or indirect nterests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

When case shall be held to involve labor dispute.

Persons in dispute.

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

When person shall be held a party to dispute.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Terms construed. "Labor dispute".

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

"Court of the United States."

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected

Separability of provisions of act.

Copy Received

11:50 A.M. April 25, 1974

Haney, Fenn, Gardner & Lambos

Attorneys for Central Gulf Lines, Inc.